

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the National Science Foundation ("NSF"), and Northeastern University ("Northeastern") (hereinafter collectively referred to as the "Parties"), through their authorized representatives.

RECITALS

A. Northeastern is a private, not-for-profit educational institution located in Boston, Massachusetts.

B. This Agreement concerns the following NSF awards under which Northeastern submitted or caused to be submitted claims for payment to NSF: PHY-9722562 (Construction of the CMS Detector); PHY-9972170 (Experimental Particle Physics); PHY-0097391 (REU Site at CERN); PHY-0140406 (Experimental Particle Physics); PHY-0204786 (Empowering Universities: Preparation for the CMS Research Program); PHY-0303841 (Empowering Universities: Preparation for the CMS Research Program - Operations & Maintenance); PHY-0457001 (Experimental Particle Physics); and PHY-0758080 (Experimental Particle Physics) (hereinafter collectively referred to as the "Awards"). NSF granted the Awards to Northeastern to support high-energy particle physics research to be conducted by Northeastern investigators largely at the European Organization for Nuclear Research ("CERN") in Geneva, Switzerland. Northeastern represented that many of the Awards would support construction of the Compact Muon Solenoid detector at CERN and would fund related Northeastern salaries, work materials, expenses, and equipment. Stephen Reucroft, formerly Northeastern's Matthews Distinguished Professor of Physics, was the principal investigator for the research to be conducted with funding from the Awards.

C. Northeastern acknowledges that the terms of the Awards and applicable federal regulations required that Northeastern ensure that funds from the Awards be used only for the purposes and under the conditions for which the Awards were granted, and specifically required, *inter alia*, that Northeastern:

- (1) have “[e]ffective control over and accountability for all funds” to “assure that they are used solely for authorized purposes” (2 C.F.R. § 215.21(b)(3));
- (2) have documentation for all claimed expenditures from each of the Awards to ensure both that all expenditures were related to a particular Award and that the expenditures were reasonable (2 C.F.R. §§ 215.21(b)(2), (b)(6), and (b)(7); Part 220, App. A §§ C.2, 4(b), and 4d(1));
- (3) maintain a financial management system that provided “[r]ecords that identify adequately the source and application of funds for federally-sponsored activities” (2 C.F.R. § 215.21(b)(2));
- (4) have records that provided for “[c]omparison of outlays with budgeted amounts for each award” (2 C.F.R. § 215.21(b)(4));
- (5) have procedures to limit the transfer of fund advances to the minimum amounts needed (2 C.F.R. § 215.21(b)(5));
- (6) time advances “to be in accordance with the actual, immediate cash requirements” of the funded research (2 C.F.R. § 215.22(b)(2));
- (7) remit interest earned on fund advances annually to the federal government (2 C.F.R. § 215.22(l));
- (8) have “[a]ccounting records including cost accounting records that are supported by source documentation” (2 C.F.R. § 215.21(b)(7));

- (9) pay salaries to each researcher pursuant to before-the-fact estimated effort and after-the-fact confirmation of time actually spent on the award (2 C.F.R. Part 220, App. A § J.10.c(1));
- (10) have procedures “to determine the reasonableness, allocability, and allowability of costs” charged to the Awards (2 C.F.R. § 215.21(b)(6); and Part 220, App. A § C.4.d(1)); and
- (11) notify NSF of “any significant problems relating to the administrative or financial aspects of the [A]wards” (NSF Grant General Conditions Article 1(a)(2)).

D. The United States contends that it has certain civil claims against Northeastern arising from Northeastern’s claims for payment under the Awards during the period from 2001 through 2010. On at least 48 occasions, in its quarterly Financial Cash Transaction Reports and its Federal Financial Reports to NSF, Northeastern certified to NSF that all of Northeastern’s disbursements under the Awards had “been made for the purposes and conditions . . . of the [A]wards.” The United States contends that these certifications were false because Northeastern failed to comply with the conditions of the Awards when Northeastern:

- (1) Approved and disbursed NSF funds without first obtaining the required documentation supporting the expenditures claimed or later obtaining the required documentation, and permitted the commingling of funds from different Awards, making it impossible to ensure that expenditures were reasonable and used solely for authorized purposes;

- (2) Approved and disbursed at least 26 advances, totaling approximately \$8.4 million in NSF funds, to CERN team accounts without required verification of need and sufficient oversight;
- (3) Did not remit to the federal government at least \$55,000 in interest accrued on advanced funds;
- (4) Approved and disbursed approximately \$531,000 in funds for salaries without the required documentation;
- (5) Disbursed approximately \$96,000 in funds for travel expenses and sundry expenses without the required documentation, or based on fraudulent documentation submitted by Professor Reucroft;
- (6) Continued to engage in these practices when it knew or should have known in 2006, if not before, that Professor Reucroft had violated NSF requirements when he submitted fraudulent claims for personal expenses, and when he claimed NSF Award funds as “advances” and deposited them into CERN team accounts without documentation of expenditures under the Awards; and
- (7) Failed timely to notify NSF of allegations of significant problems relating to the administrative and financial aspects of the Awards.

The conduct described in this section, Recital D, is referred to below as the Covered Conduct.

In order to settle this matter, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Within seven days of the Effective Date of this Agreement (defined in section 16 below), Northeastern shall pay \$2,700,000 (the "Settlement Amount") to the United States by electronic funds transfer pursuant to written instructions from the United States. In the event that all or any portion of the Settlement Amount is not paid within seven days of the Effective Date, Northeastern also shall pay to the United States interest on any amount not timely paid, which interest shall accrue at the annual rate of 12% beginning seven days after the Effective Date.

2. Subject to the exceptions in Paragraph 3 below (concerning excluded claims), and conditioned upon Northeastern's payment of the full Settlement Amount, the United States, on behalf of itself, its officers, agents, agencies, and departments, releases Northeastern, together with its predecessors, successors and assigns, its current and former officers and trustees, and its current and former employees (except Professor Reucroft), from any civil or administrative monetary claims that the United States has for the Covered Conduct under the common law theories of negligent misrepresentation, breach of contract, payment by mistake, and unjust enrichment.

3. Notwithstanding the release set forth in paragraph 2 or any other terms of this Agreement, the following claims of the United States are specifically reserved and are not released by this Agreement:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue);
- b. Any criminal liability;
- c. Any nonmonetary administrative liability, including the suspension and debarment rights of any agency of the United States;
- d. Any liability under the False Claims Act, 31 U.S.C. § 3729-33;

- e. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- f. Any liability of individuals named in this Agreement; and
- g. Any liability based on obligations created by this Agreement.

4. Northeastern agrees to abide by all terms of the Compliance Agreement that is attached hereto and which is incorporated herein.

5. Northeastern waives and shall not assert any defenses Northeastern may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

6. Northeastern releases the United States, its agencies, officers, agents, employees, and servants from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Northeastern has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. Northeastern agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in OMB Circular A-21 and the OMB Uniform Guidance, and the regulations and official program directives promulgated

thereunder) incurred by or on behalf of Northeastern and its present or former trustees, officers, employees and agents, in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigations(s) of the matters covered by this Agreement;
- (3) Northeastern's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement and the Compliance Agreement with NSF; and
- (5) the payment Northeastern makes to the United States pursuant to this Agreement.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Northeastern, and Northeastern shall not charge such Unallowable Costs directly or indirectly to any grant, contract, cooperative agreement, or other form of agreement or award by or with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Northeastern shall identify and repay by adjustment to future claims for payment or otherwise, any Unallowable Costs included in payments previously sought by Northeastern from the United States. Northeastern agrees that the United States shall be entitled to recoup from Northeastern any such payments plus applicable interest and penalties as a result of inclusion of such Unallowable Costs on previously-submitted requests for payment.

d. The United States reserves its right to audit, examine, and re-examine Northeastern's records at any time regarding such Unallowable Costs or the effect of any such Unallowable Costs on the amount of such payments.

8. Northeastern agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released by this Agreement, including producing to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and other records in Northeastern's custody or control concerning any investigation of the Covered Conduct that it has undertaken or that has been performed by another on its behalf.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. The Parties consent to the disclosure to the public of this Agreement.

11. This Agreement constitutes the complete agreement between the United States and Northeastern with respect to the matters addressed herein. This Agreement may not be amended except by written consent of the United States and Northeastern.

12. The United States and Northeastern represent that they have freely and voluntarily entered into this Agreement without any degree of duress or compulsion.

13. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Massachusetts. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by both Parties and shall not, therefore, be construed against either Party for that reason in any subsequent dispute.

14. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the Party for whom they are signing below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and each of which constitutes one and the same Agreement.

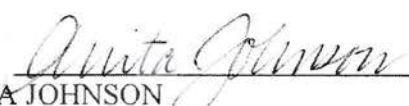
16. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED:

8/18/2015

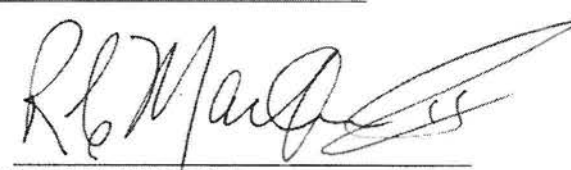
BY:


ANITA JOHNSON
Assistant United States Attorney
United States Attorney's Office
District of Massachusetts

NORTHEASTERN UNIVERSITY

DATED:

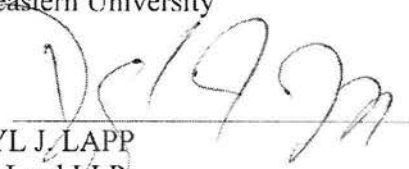
BY:


RALPH C. MARTIN, II
Senior Vice President and General Counsel
Northeastern University

DATED:

8/17/15

BY:


DARYL J. LAPP
Locke Lord LLP
Counsel for Northeastern University